

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

13 CV 0717-A

JOACHIM SYLVESTER,

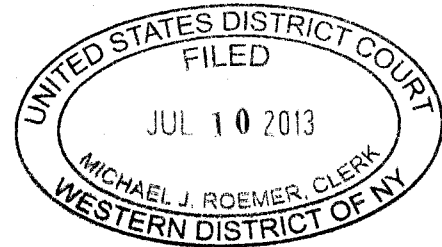
COMPLAINT

Plaintiff,

vs

CORY SMITH; TARIQ KHONDER A/K/A TARIQ
KHONDKER; WNYREG REAL ESTATE GROUP,
Buffalo, New York; PUSHPA GUNATILAKE,
Williamsville, New York,

Defendants.



Plaintiff in the above-captioned action alleges as follows:

1. This is a civil action seeking relief and/or damages to defend and protect my rights guaranteed by the United States Constitution and under this Court's diversity of citizenship jurisdiction. This action is brought pursuant to 42 USC 1983, 1985. This Court has jurisdiction over this action pursuant to 28 USC 1331, 1343(3) and (4) and 2201 as well as pursuant to its diversity of citizenship jurisdiction.

PARTIES

2. Plaintiff JOACHIM SYLVESTER, resides at 1353
Ontario Avenue, Niagara Falls, New York 14305.

3. Defendant CORY SMITH, to the best of my knowledge and belief has left the State of New York and now resides in the State of Florida.

4. Defendant TARIQ KHONDER A/K/A TARIQ KHONDKER resides in Canada at 3212A Eglinton Avenue, Scarborough, Canada M1J2H6, based on information and belief. Defendants have, according to information and belief, have either sold or made sales transactions as to properties located at 1352 and 1809 and 1811 Ontario Avenue, Niagara Falls, New York 14305, in violation of written contractual agreements with me and in violation of rights secured by me under the U.S. Constitution, such sales having been made to defendants WNYREG Real Estate Group, 139 Niagara Falls Blvd., Buffalo, New York 14214, and PUSHPA GUNATILAKE, 26 Applefield Dr., Williamsville, New York 14221.

5. The defendants are being sued in their individual/personal capacities and jointly and severally for compensatory and punitive damages arising out of their joint/concerted actions in creating a contract to sell and transfer sale of property to me located at the addresses indicated in paragraph 4, supra, which contract was put in writing and made under witness before Tara Rich and others on January 14, 2012.

6. Defendants acted under fraudulent pretenses and also conspired to and did steal substantial amounts of cash and funds owed to me for labor to renovate the Ontario Avenue address residents above.

7. During the period from 1/14/12 and up to the present date official permits to work on said properties were granted to me by Niagara Falls City Hall (SEE ATTACHED)

8. In fact, I have spent over \$5,000.00 cash and a total of more than \$32,000.00 including cash and labor in renovating the above two properties during the period from 1/14/12 to the present.

9. I have in fact hired many persons to assist me in the renovation of the two residences all of which the defendants are well aware of.

9. Defendant CORY SMITH at the relevant times resided in Niagara Falls, New York but, upon information and belief, has left and relocated to Florida at an unknown address.

10. Defendant TARIQ KHONDER has resided in Canada at the address listed at paragraph 4, supra, continuously to the present to the best of my knowledge and belief.

11. Defendant KHONDER refuses to accept any phone calls from me and according to information and belief has sold or attempted to sell the aforesaid two properties and refused to reimburse me for the cash and labor put into the two residences despite the fact that written contract to TRANSFER THE SALE OF 1811 & 1809 ONTARIO AVENUE TO JOACHIM SYLVESRTER FOR THE AMOUNT OF \$6500 WITH THE PURCHASING OF 1809 ONTARIO AVENUE FIRST AT \$2500 WITH THE INTENTION OF SELLING 1811 ONTARIO TO JOACHIM SYLVESTRE FOR THE AMOUNT OF \$4000 IF INTERESTED IN PURCHASING THE PROPERTY SALE TODAY 1-14-2012 IS OF 1809 ONTARIO FOR \$2500. (SEE ATTACHED BILL OF SALE DATED AND WITNESSED BY TARA RICH ON 1-14/2012)

13. Also attached hereto as exhibits are two receipts showing down payments of \$1,800.00 and \$2,000.00 dated Nov. 8, 2011 and Jan. 14, 2012, respectively, on the two residences.

14. The combined facts indicating the departure of Cory Smith from New York State to Florida without notice to me of any new address or means to contact him, the sale of the two subject matter residences, the refusal of Tariq Khonder to answer my calls or to reimburse me for the costs expended in cash and labor in connection with renovating the two residences, are all indicative of breach of contract, conspiratorial acts, fraud and civil rights violations committed by defendants SMITH AND KHONDER

15. I have made repeated, but unsuccessful, attempts to contact defendant KHONDER via phone and to ascertain the location of defendant SMITH in order to obtain payment for the cash and labor expended in the two residences herein.

CLAIMS

16. Adopting all allegations set forth at paragraphs 1-13, I assert that:

17. Defendants breached the written and verbal contracts entered with respect to the two premises.

18. Defendants committed fraud against me.

20. This Court should exercise its diversity of citizenship jurisdiction over all claims set forth herein.

21. Defendants by their actions inflicted extreme emotional distress on me. *Neufeld v Neufeld*, 910 F. Supp. 977 (SDNY 1996)

22. A plaintiff "may plead conspiracy in order to connect the actions of the individual defendants with an actionable underlying tort and establish that those acts flow from a common scheme or plan". *American Preferred Proscription, Inc. v Health Management Inc.*, 252 AD2d 414, 416 (1st Dept. 1998); *Alexander & Alexander of New York Inc. v Fritzen*, 68 NY2d 968, 969 (1986)

23. *Howell v New York Post Co.*, 81 NY2d 115 (1993) describes the tort of Intentional Infliction of Emotional Distress and notes that it "may overlap other areas of the law" by creating "liability for conduct that is otherwise lawful". *Id.*, at 122.

24. Defendants acted in part, on racial, invidious discriminatory animus to deny me, an African-American, equal protection of the laws. 42 USC 1985(3); *Griffin v Breckenridge*, 403 US 83, 102 91 S. Ct. 1790, 1798 (1971)

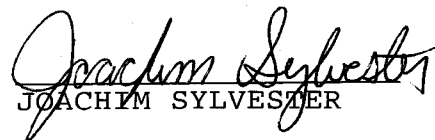
25. Defendants neglected to prevent a known civil rights conspiracy against me while having a duty to prevent same arising out of the contractual agreement herein and while having knowledge of such conspiracy. 42 USC 1986.

RELIEF REQUESTED:

1) Compensatory damages at \$31,000.00 for the cash and labor put into the two subject matter residences; 2) compensatory damages of \$50,000.00 for the intentional infliction of emotional distress on me by defendants; 3) \$50,000.00 punitive damages for the malicious and willful conduct of the defendants; 4) all damages to be assessed individually or jointly and severally against each defendant; 5) Temporary Restraining Order relief preventing defendants from selling the two subject matter Ontario Avenue residences pending this litigation; 6) that this Court exercise its diversity of citizenship jurisdiction over the defendants Smith and Khonder and also exercise pendent jurisdiction over any state law claims set forth herein; 7) that this Court grant other equitable and just relief deemed appropriate herein.

I DECLARE UNDER PENALTY OF PERJURY THAT
THE FOREGOING IS TRUE. EXECUTED ON

July 5, 2013


JOACHIM SYLVESTER

AFFIDAVIT OF SERVICE

State of New York)
County of Niagara) SS:

Re: Joachim Sylvester v Cory Smith
& Tariq Khonder, _____ CV _____

Joachim Sylvester, under penalty of perjury, declares that on the 5 day of July, 2013, I have mailed the within notice of motion, supporting affidavit and exhibits in support of a Temporary Restraining Order pursuant to Federal Rules Of Civil Procedure 65, to the address below, postage fees prepaid, via certified return receipt mail, deposited in an official United State Post Office Box in the State of New York:

TO:

TARIQ KHONDER
3212A Eglinton Avenue
Scarborough, Canada M1J2H6

WNYREG REAL ESTATE GROUP
139 NIAGARA FALLS BLVD.
BUFFALO, NEW YORK 14214

Pushpa Gunatilake
26 Applefield Drive
Williamsville, New York 14221

Dated: July 5, 2013
Niagara Falls, N.Y.

I declare under penalty of perjury that the foregoing is true. Executed on: July 5, 2013
2013
(28 USC #1746)

ORIGINAL TO:

Michael J. Roemer, Clerk of Court
United States District Court
Western District of New York
United States Courthouse
Buffalo, New York 14202-3350

Joachim Sylvester
Joachim Sylvester
1353 Ontario Avenue
Niagara Falls, New York
14305